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CONCORD, N.H.

1952

Dec. 16

His Excellency, Acting Governor Elaylock Atherton  
and the Honorable Council  
State House

Gentlemen:

You have requested the opinion of this office as to the legality of approving the transfer of the sum of two thousand two hundred forty dollars and ninety-two cents (\$2,242.92) from the so-called land fund of the Industrial School for the purpose of constructing a reception and detention center in the Administration Building of this institution. It is our opinion that such use may not be made of the monies from this fund.

This fund was accumulated from the proceeds derived from the sale of land owned by the Industrial School. Revised laws, chapter 463, section 1 provides as follows:

"The board of trustees shall be known as the trustees of the Industrial School, and shall be a corporation for the purpose of taking, holding and managing, in trust for the state, lands, money or other property granted, devised or bequeathed for the use of the school, and of selling and conveying the same and of investing the proceeds thereof."

It is our opinion that the provisions of this section in giving certain powers to the trustees also place certain limitations upon the trustees in the handling of property of the Industrial School. The trustees may sell school property but by the terms of the statute they must "invest the proceeds thereof". Using this money for physical improvement of the school could not be considered an investment in the ordinary sense of the word.

I am aware that administrative practice in the handling of this fund in past years would be contrary to the opinion rendered herein. However, in view of the decision of the courts in the case of *State v. Kimball*, 96 N. H. 377, I would feel that past administrative practice would be shaky grounds upon which to base an opinion relative to the expenditure of public funds.

Very truly yours,

Henry Dowst, Jr.,  
Assistant Attorney General

LD:MM

c.c. Gardner Turner, Esq.